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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **AUG 27 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO affirmed the director's decision on January 10, 2012. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The self-represented petitioner is a religious organization.<sup>1</sup> It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The AAO, in its January 10, 2012 decision, determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition and that the petitioning organization qualifies as a bona fide nonprofit religious organization.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to U.S. Citizenship and Immigration Services (USCIS)) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) requires that a motion be signed by an affected party or the attorney or representative of record, and 8 C.F.R. § 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed.

Here, the party that signed the Form I-290B was not the petitioner, but rather the beneficiary, [REDACTED]. Because the beneficiary did not file the petition, he is not an affected party, and therefore he has no standing to file a motion on the petitioner's behalf. Accordingly, the motion does not meet the filing requirement at 8 C.F.R. § 103.5(a)(1)(iii)(A).

Furthermore, no brief or additional evidence was submitted with the filing of the motion. On the Form I-290B, the [REDACTED] stated the following:

The petitioner, [REDACTED] is a 501(c)(3) federally tax exempt religious organization. The Petitioner has provided documentation from the IRS, and will provide further documentations.

[REDACTED] did not provide any specific argument or lay out any clear legal grounds to support either motion on the Form I-290B, nor did he identify the evidence that he claimed would be forthcoming to support the motions.

On March 12, 2012, the AAO received documentary evidence in support of the motions.

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<sup>1</sup> While the AAO sent a copy of its previous decision to the petitioner's attorney, the record does not contain a new Form G-28, Notice of Appearance as Attorney or Representative signed by the petitioner. Thus, the AAO considers the petitioner self-represented.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a party to submit new evidence in furtherance of a previously-filed motion.

Similarly, the instructions to the Form I-290B provide that unlike appeals, motions may not be supplemented and specifically state that all evidence “must be submitted with the motion.” The Form I-290B itself contains six boxes, one of which the petitioner must check to indicate whether the petitioner is filing an appeal or motion. Of the three boxes that pertain to motions, all indicate that the brief and/or additional evidence is “attached” to the motion. The form contains no provision for the submission of briefs or evidence after the filing of the motion. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with form instructions which are incorporated into the regulation.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The plain language of each regulation makes clear that submission of the supporting material and a legal basis for the motion is mandatory, not permissible. This language, combined with the form instructions and the form, explicitly require the motion to reopen and reconsider to be supported at the time of filing.

The motion did not meet the regulatory requirements of a motion to reopen or reconsider.

**ORDER:** The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated January 10, 2012 is affirmed, and the petition remains denied.